

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

JAMES and RAE CYR,)	CV-04-99-BLG-RFC
)	
Plaintiffs,)	
vs.)	
)	
FARMERS ALLIANCE MUTUAL)	ORDER ADOPTING FINDINGS
INSURANCE CO., a Kansas Corporation,)	AND RECOMMENDATIONS OF
)	UNITED STATES
Defendant.)	MAGISTRATE JUDGE
<hr/>)	
)	
FARMERS ALLIANCE MUTUAL)	
INSURANCE CO., a Kansas Corporation,)	
)	
Third-Party Plaintiff,)	
)	
vs.)	
)	
RESERVE CENTRAL INSURANCE AGENCY,)	
d/b/a MONTANA CENTRAL INSURANCE)	
AGENCY, a Montana Corporation,)	
)	
Third-Party Defendant.)	
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On August 15, 2006, United States Magistrate Judge Richard W. Anderson entered his Findings and Recommendations. Magistrate Judge Anderson recommends that this Court (1) grant Defendant Farmer's Alliance Mutual Insurance, Co.'s ("FAMI") Motion for Summary Judgment on Plaintiffs' fraud and Unfair Trade Practices Act ("UTPA") claims, (2) grant

Defendant FAMI'S Motion for Summary Judgment on Plaintiffs' claims for punitive damages, (3) deny Defendant FAMI's Motion for Summary Judgment on Plaintiffs' breach of contract claim, and (4) deny Plaintiffs' Motion for Summary Judgment in its entirety.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b). In this matter, Plaintiff filed objections on September 1, 2006. *Doc. 96*. Defendants urged adoption of the Findings and Recommendations in a brief dated September 11, 2006. *Doc. 98*. To which Plaintiffs replied on September 25, 2006. *Doc. 102*.

Plaintiffs' objections are not well taken. In stating that Magistrate Judge Anderson's finding is "based upon its own interpretation of Montana law," Plaintiff fails to understand that the task of a federal courts in a diversity action is to approximate state law as closely as possible and predict how the state high court would resolve it. *Dimidowich v. Bell & Howell*, 803 F.2d 1473, 1482 (9th Cir. 1986), modified at 810 F.2d 1517 (9th Cir. 1987). That is exactly what occurred in this case.

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Anderson are well grounded in law and fact and **HEREBY ORDERS** they be adopted in their entirety.

IT IS FURTHER ORDERED:

- (1) Defendant FAMI's Motion for Summary Judgment on Plaintiffs' fraud and UTPA claims (*Doc. 63*) is **GRANTED**;
- (2) Defendant FAMI'S Motion for Summary Judgment on Plaintiffs' claims for punitive damages (*Doc. 63*) is **GRANTED**;

(3) Defendant FAMI's Motion for Summary Judgment on Plaintiffs' breach of contract claim (*Doc. 63*) is **DENIED**;

(4) Plaintiffs' Motion for Summary Judgment (*Doc. 62*) is **DENIED** in its entirety.

The Clerk of Court shall notify the parties of the entry of this Order.

DATED this 26th day of September, 2006.

/s/ Richard F. Cebull
RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE

cc:

Terry Wallace
Ross Tillman
Thomas Leonard
Matthew Hayhurst
Geoffrey Keller
Shane McGovern